



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: CooperVision, Inc.  
File: B-229920.2  
Date: March 23, 1988

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### DIGEST

1. Cancellation of a brand name or equal request for proposals (RFP) after receipt of proposals is proper where the RFP lists salient characteristics that exceeded the actual needs of the government and the agency determines that resolicitation under relaxed specifications to enhance competition is in the best interest of the government.
2. A protester's interest as a beneficiary of more restrictive specifications is not protectable under the General Accounting Office's bid protest function, which is to ensure that the statutory requirement for full and open competition has been met.

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### DECISION

CooperVision, Inc. protests the cancellation after receipt of proposals of solicitation No. F64605-87-R-0042, a brand name or equal requirement issued by the Air Force for an ophthalmic YAG laser system and on-site training for operators and biomedical repair technicians at Clark Air Force Base, the Philippines.

We deny the protest.

The request for proposals (RFP) was issued on September 10, 1987, for a "YAG ophthalmic laser system" on a brand name or equal basis. Award was made to IFORM, Inc. based on its "or equal" equipment on December 3. CooperVision protested this award challenging the responsiveness of IFORM's equipment to the salient characteristics as listed in the RFP. The agency sustained CooperVision's protest on January 19, 1988, and directed that the solicitation be rescinded and contract to IFORM terminated for the convenience of the government. The agency found that the RFP's listed salient characteristics overstated the actual needs of the agency and,

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therefore, the agency would resolicit under relaxed specifications at a later date. This protest followed on February 1.

Specifically, CooperVision protests the cancellation of the RFP and argues that award should have been made to CooperVision as the next lowest, responsive bidder. The protester does not agree with the agency that specifications which are overstated serve as a compelling reason to cancel a solicitation, and further alleges that the agency's determination to cancel is a result of the difference in price of IFORM's and CooperVision's products.<sup>1/</sup> We find the protester's arguments to be without merit.

In a negotiated procurement, generally contracting officials need only demonstrate a reasonable basis for cancellation after receipt of proposals, as opposed to the "cogent and compelling" reason required for cancellation of a solicitation where sealed bids have been opened. AWD Mehle GmbH, B-225579, Apr. 16, 1987, 87-1 CPD ¶ 416, aff'd on reconsideration, B-225579.2, June 11, 1987, 87-1 CPD ¶ 584. The standards differ because in procurements using sealed bids, competitive positions are exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. Id. We recognize that here the awardee's price has been revealed; however, we believe that cancellation of the RFP in this case was justified even under the "cogent and compelling" standard applied to sealed bid procurements.

The Air Force determined that CooperVision's protest concerning the responsiveness of IFORM's equipment to the RFP's salient characteristics had merit but, because IFORM's equipment would satisfactorily serve the purpose of the agency, that the RFP salient characteristics overstated the agency's minimum needs. Therefore, a decision to resolicit with relaxed specifications to enhance competition and obtain lower prices was determined to best suit the actual needs of the agency. CooperVision has not shown that the agency's determination of its needs is unreasonable.

Federal Acquisition Regulation § 14.404-1(c)(9) (FAC 84-5) specifically permits cancellation, consistent with the compelling reason standard, where cancellation is clearly in the government's best interest; a contracting officer's desire to obtain enhanced competition by relaxing

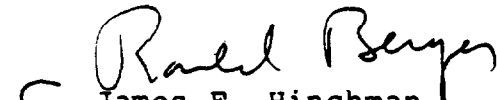
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<sup>1/</sup> IFORM proposed a price of \$27,800 while CooperVision proposed a price of \$39,300.

a material specification constitutes a valid reason for cancellation under this FAR standard. Display Sciences, Inc.--Request for Reconsideration, B-222425, Aug. 26, 1986, 86-2 CPD ¶ 223. In addition, our Office has held that the cancellation of a solicitation is appropriate if the needs of the agency have been overstated or have changed in some material respect. See Southwest Marine, Inc., B-229596, B-229598, Jan. 12, 1988, 88-1 CPD ¶ 22; Aero Innovation, Ltd., B-227677, Oct. 5, 1987, 87-2 CPD ¶ 332. Under these circumstances, the Air Force was justified in canceling the RFP even after the award price was exposed. Aero Innovation, Ltd., B-227677, supra.

CooperVision contends that its equipment will meet the agency's needs and, therefore, a resolicitation on the basis of less restrictive specifications would serve no useful purpose. Essentially, CooperVision is arguing that the solicitation based on the more restrictive specifications should be the basis for award. However, a protester's interest as a beneficiary of more restrictive specifications is not protectable under our bid protest function, which is to ensure that the statutory requirement for full and open competition has been met. ACRAN, Inc., B-225654, May 14, 1987, 87-1 CPD ¶ 509. To award CooperVision a contract under overstated specifications would not be in the best interests of the government since the record indicates such a proposal would not be cost effective. Furthermore, revising the RFP to enhance competition is consistent with the statutory mandate in the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a)(1)(A) (Supp. III 1985), requiring agencies to obtain full and open competition and which, as indicated above, is a sufficiently compelling basis to justify the agency's determination to cancel the solicitation. See Agro Construction and Supply Co., 65 Comp. Gen. 470 (1986), 86-1 CPD ¶ 352.

The protest is denied.

  
James F. Hinchman  
General Counsel